

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

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CC:PSI:B02

PLR-109032-10

Date:

July 13, 2010

Legend

Trust =

A =

B =

X =

Court =

Date 1 =

Date 2 =

Dear :

This responds to a letter dated February 9, 2010 and subsequent correspondence, submitted on behalf of Trust, requesting rulings under §§ 664 and 4941 of the Internal Revenue Code concerning the qualification of Trust as a charitable remainder unitrust (CRUT).

The information submitted states that on Date 1, A created Trust with the intention that Trust qualify as a fixed percentage CRUT under § 664(d)(2). X is the trustee of Trust. A established Trust with the assistance of an accountant and an

attorney. However, due to a drafting error, Trust was drafted as a single-life CRUT rather than as a two-life CRUT.

In order to correct the scrivener's error, and because Trust is irrevocable, Trustee sought an order from Court authorizing an amendment ab initio of Trust. No parties objected to the proposed reformation. On Date 2, Court issued an order reforming Trust to a two-life CRUT, subject to the Service issuing a private letter ruling that the reformation of Trust will not disqualify Trust as a charitable remainder trust.

Section 664(d)(2) provides that for purposes of § 664, a CRUT is a trust (A) from which a fixed percentage (which is not less than 5 percent nor more than 50 percent) of the net fair market value of its assets, valued annually, is to be paid, not less often than annually, to one or more persons (at least one of which is not an organization described in § 170(c) and, in the case of individuals, only to an individual who is living at the time of the creation of the trust) for a term of years (not in excess of 20 years) or for the life or lives of such individual or individuals, (B) from which no amount other than the payments described in § 664(d)(2)(A) and other than qualified gratuitous transfers described in § 664(d)(2)(C) may be paid to or for the use of any person other than an organization described in § 170(c), (C) following the termination of the payments described in § 664(d)(2)(A), the remainder interest in the trust is to be transferred to, or for the use of, an organization described in § 170(c) or is to be retained by the trust for such a use or, to the extent the remainder interest is in qualified employer securities (as defined in § 664(g)(4)), all or part of such securities are to be transferred to an employee stock ownership plan (as defined in § 4975(e)(7)) in a qualified gratuitous transfer (as defined § 664(g)), and (D) with respect to each contribution of property to the trust, the value (determined under § 7520) of such remainder interest in such property is at least 10 percent of the net fair market value of such property as of the date such property is contributed to the trust.

Section 1.664-3(a)(4) of the Income Tax Regulations provides that the trust may not be subject to a power to invade, alter, amend, or revoke for the beneficial use of a person other than an organization described in § 170(c).

Section 4941(a)(1) imposes an excise tax on each act of self-dealing between a disqualified person and a private foundation. Section 4941(d)(1)(E) defines the term "self-dealing" as any direct or indirect transfer to, or the use by or for the benefit of, a disqualified person of the income or assets of a private foundation. Section 4946(a) defines the term "disqualified person" with respect to a private foundation as including a substantial contributor to the foundation (including the creator of a trust).

Section 4947(a)(2) provides generally that split-interest trusts are subject to the provisions of § 4941 in the same manner as if such trusts were private foundations, but, under § 4947(a)(2)(A), not with respect to any amounts payable under the terms of such

trust to income beneficiaries, unless a deduction were allowed under §§170(f)(2)(B), 2055(e)(2)(B), or 2522(e)(2)(B).

Based solely on the information submitted and representations made, we conclude that the judicial reformation of Trust, ab initio, does not violate § 664. Furthermore, assuming that the terms of the reformed Trust are otherwise valid under § 664, the reformed Trust will be treated as a valid CRUT under § 664(d)(2). We also conclude that the judicial reformation of Trust will not be an act of self-dealing under § 4941. Within 120 days of the date of this letter, Trust, A, and B must file any necessary income or gift tax returns consistent with the treatment of Trust as a two-life CRUT effective Date 1. A copy of this letter should be attached to any such returns. If Trust, A, or B fails to file any necessary amended returns, this ruling is null and void.

Except as specifically set forth above, no opinion is expressed as to the federal tax consequences of the above described facts under any other provision of the Code. Specifically, no opinion is expressed concerning whether Trust is or was a charitable remainder trust within the meaning of § 664 or as to any other income, gift, or estate tax consequences of the creation of Trust.

This ruling is directed only to the taxpayer on whose behalf it was requested. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to Trust's authorized representative.

Sincerely,

Bradford R. Poston
Acting Chief, Branch 2
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes

cc: